

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BOILERMAKERS NATIONAL ANNUITY  
TRUST, On Behalf of Itself and All Others  
Similarly Situated,

Plaintiff,

v.

WAMU MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2006-ARI, *et al.*,

Defendants.

No. C09-0037 (MJP)

MOTION OF BOILERMAKERS  
NATIONAL ANNUITY TRUST, NEW  
ORLEANS EMPLOYEES' RETIREMENT  
SYSTEM AND MARTA/ATU LOCAL 732  
EMPLOYEES RETIREMENT PLAN FOR  
APPOINTMENT OF LEAD PLAINTIFFS  
AND APPROVAL OF LEAD COUNSEL;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF

NOTE ON MOTION CALENDAR:  
April 3, 2009

NEW ORLEANS EMPLOYEES'  
RETIREMENT SYSTEM and MARTA/ATU  
LOCAL 732 EMPLOYEES RETIREMENT  
PLAN, Individually and on Behalf of All Others  
Similarly Situated,

Plaintiff,

v.

WASHINGTON MUTUAL BANK, *et al.*,

Defendants.

No. C09-00134 (RSM)

MOTION FOR APPOINTMENT OF LEAD PLAINTIFFS  
AND APPROVAL OF LEAD COUNSEL; MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT THEREOF  
Case Nos. C09-0037 (MJP) / C09-00134 (RSM)

The Boilermakers National Annuity Trust (“Boilermakers”), New Orleans Employees’ Retirement System (“New Orleans”) and MARTA/ATU Local 732 Employees Retirement Plan (“MARTA/ATU”) (collectively, “Plaintiffs” or “Movants”), hereby move, pursuant to the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 77z-1, for appointment of Lead Plaintiffs and for approval of Schoengold Sporn Laitman & Lometti, P.C. (“SSL”), Labaton Sucharow LLP (“Labaton”) and Barroway Topaz Kessler Meltzer & Check, LLP (“BTKMC”) as Lead Counsel for the Class and Hagens Berman Sobol Shapiro LLP (“HBSS”) as Liaison Counsel for the Class.

### I. INTRODUCTION

The complaints filed in these actions<sup>1</sup> allege violations of Sections 11, 12 and 15 of the Securities Act of 1933, 15 U.S.C. § 77a *et seq.* (“Securities Act”) on behalf of purchasers of Washington Mutual Mortgage Pass-Through Certificates (the “Certificates” or the “WaMu Certificates”) who purchased the Certificates, backed by pools of residential mortgage loans, pursuant to or traceable to a Registration Statement filed by Washington Mutual Asset Acceptance Corporation, in a series of public offerings of Mortgage Pass-Through Certificates (“MPTC”) from January 2006 through July 2007 issued by the Defendant Issuer Trusts (collectively, the “Offerings” or the “WaMu Offerings”).

The Certificates were issued pursuant to a common Registration Statement filed with the Securities Exchange Commission (“SEC”) in or around January 2006 (the “Registration Statement”). The Offerings occurred in this venue. The Certificates herein are Mortgage Pass-Through Certificates collateralized by mortgages originated principally by Washington Mutual

---

<sup>1</sup> A motion for consolidation of these two actions, *Boilermakers National Annuity Trust, et al. v. WaMu Mortgage Pass-Through Certificates Series 2006-AR1, et al.*, C09-0037 (MJP) (the “Boilermakers Action”) and *New Orleans Employees Retirement System, et al. v. Washington Mutual Bank, et al.*, C09-00134 (RSM) (the “New Orleans Action”), was filed by Defendants WaMu Capital Corporation, Washington Mutual Asset Acceptance Corporation and the Individual Defendants on February 19, 2009. Said motion is unopposed by all parties herein, except Defendant Federal Deposit Insurance Corporation (“FDIC”), as receiver for Defendant Washington Mutual Bank.

1 Bank, F.S.B. (“WMB”) as well as various third-party mortgage loan originators, each of which at  
2 all relevant times were commercial and residential lenders. The mortgages and liens on the  
3 mortgaged properties constituting the Certificates collateral were, as set forth in the  
4 Prospectuses, to be the principal source by which Certificate purchasers were to obtain  
5 repayment of their investment, plus interest. As also set forth in the Registration Statements, the  
6 Certificate collateral was purportedly originated pursuant to specific underwriting procedures  
7 and guidelines.

8 The Underwriter for the Offerings was Washington Mutual Capital Corporation  
9 (“WMCC” or the “Underwriter”). The Underwriter was obligated to conduct meaningful due  
10 diligence to ensure that the Registration Statement contained no material misstatements and  
11 omissions, including as related to the stated manner in which the mortgages had been originated.  
12 The Underwriter received substantial fees for its work in connection with the Offerings. At the  
13 time of the Offerings, the Certificates were issued at or around par value.

14 The Boilermakers Action was first filed in United States District Court for the Western  
15 District of Washington on January 12, 2009. A PSLRA notice was published pursuant to the  
16 Private Securities Litigation Reform Act of 1995 (the “PSLRA”) in a national business-oriented  
17 wire service on January 14, 2009 (*See* Declaration of Steve Berman in Support of Motion for  
18 Appointment of Lead Plaintiffs and Approval of Lead Counsel (the “Berman Decl.”), Exhibit  
19 (“Ex.”) A). This motion is being filed within 60 days from the date of publication of that first  
20 notice.

21 The New Orleans Action was initially filed on or about August 4, 2008, in Washington  
22 State, King County Superior Court, Case No. 08-2-26210-3 SEA, and was assigned to the  
23 Honorable Michael J. Trickey (the “King County Action”). Thereafter, on December 16, 2008,  
24 Plaintiffs New Orleans and MARTA/ATU filed a First Amended Complaint in the King County  
25 Action. On January 29, 2009, Defendants filed a Notice of Removal to remove the King County  
26 Action to Federal District Court, which was assigned Docket No. 09-cv-00134 (RSM). A

1 PSLRA notice was published pursuant to the Private Securities Litigation Reform Act of 1995  
 2 (the “PSLRA”) in a national business-oriented wire service on February 18, 2009, by Labaton  
 3 and BTKMC on behalf of Plaintiffs New Orleans and MARTA/ATU, which included reference  
 4 and explanation of the Boilermakers Action and the PSLRA notice filed on January 12, 2009.  
 5 *See* Berman Decl. Ex. B. This motion is being filed within 60 days from the date of publication  
 6 of that January 12, 2009, notice.

7 As set forth in the Boilermakers’ Certification of Securities Class Action Complaint  
 8 (“Boilermakers Certification”), which is annexed as Ex. C to the Berman Decl., the Boilermakers  
 9 expended approximately \$6,906,509.90 to purchase units of WaMu Mortgage Pass-Through  
 10 Certificates Series 2006-AR7 and Series 2007-HY7. *See* Berman Decl., Ex. C. As set forth in  
 11 New Orleans’ Certification of Securities Class Action Complaint (“New Orleans Certification”),  
 12 which is annexed as Ex. D to the Berman Decl., New Orleans expended approximately  
 13 \$899,741.66 to purchase units of WaMu Mortgage Pass-Through Certificates Series 2005-AR12,  
 14 Series 2006-AR14, Series 2006-AR16, Series 2006-AR18 and Series 2006-HY2. Furthermore,  
 15 as set forth in MARTA/ATU’s Certification of Securities Class Action Complaint  
 16 (“MARTA/ATU Certification”), which is annexed as Ex. E to the Berman Decl., MARTA/ATU  
 17 expended approximately \$3,412,334.80 to purchase units of WaMu Mortgage Pass-Through  
 18 Certificates Series 2006-AR2, Series 2006-AR12, Series 2006-AR16, Series 2006-AR18, Series  
 19 2007-HY2, Series 2007-HY4 and Series 2007-HY7. As of the filing date hereof, the collective  
 20 outstanding investments in Certificates of the proposed Lead Plaintiffs have declined in value in  
 21 excess of sixty-two percent (62%), thus, resulting in a substantial loss and giving rise to a  
 22 compelling financial interest in the relief sought by the putative class herein. By virtue of this  
 23 loss, it is respectfully submitted that the Court should appoint the Boilermakers, New Orleans  
 24 and MARTA/ATU as Lead Plaintiffs, most capable of adequately representing the interests of  
 25 the Class and approve SSSL, Labaton and BTKMC as Lead Counsel, and HBSS as Liaison  
 26 Counsel for the Class. SSSL, Labaton, BTKMC, as well as HBSS each have extensive

MOTION FOR APPOINTMENT OF LEAD PLAINTIFFS  
 AND APPROVAL OF LEAD COUNSEL; MEMORANDUM OF  
 POINTS AND AUTHORITIES IN SUPPORT THEREOF - 3  
 Case Nos. C09-0037 (MJP) / C09-00134 (RSM)

010094-11 291398 V1



HAGENS BERMAN  
 SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
 TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

1 experience in securities fraud and derivative litigation and have won many important victories  
 2 for shareholders who have been injured as a result of securities fraud. *See* Berman Decl., Exs. F,  
 3 G, H, I.

## 4 II. ARGUMENT

### 5 A. Movants Are The Most Adequate Plaintiffs Under The Securities Act

6 On December 22, 1995, Congress enacted Public Law 104-67, 109 Stat. 737  
 7 (December 22, 1995), entitled the Private Securities Litigation Reform Act of 1995 (the  
 8 “PSLRA”), codified at 15 U.S.C. § 77z-1. The PSLRA amends the Securities Act to include a  
 9 new Section 27 that, *inter alia*, sets forth a detailed procedure for selecting the lead plaintiff to  
 10 oversee class actions brought under the federal securities laws.

11 Section 27(a)(3)(B)(i) of the Securities Act directs the court to appoint as lead plaintiff  
 12 “the member or members of the purported plaintiff class that the court determines to be most  
 13 capable of adequately representing the interests of class members.” Section 27(a)(3)(B)(iii)  
 14 requires a presumption that the most adequate plaintiff:

15 (aa) has either filed the complaint or made a motion in response  
 16 to a notice under [the PSLRA];

17 (bb) in the determination of the court, has the largest financial  
 18 interest in the relief sought by the class; and

19 (cc) otherwise satisfies the requirements of Rule 23 of the  
 20 Federal Rules of Civil Procedure.

21 Section 27(a)(3)(B)(iii), 15 U.S.C. § 77z-1(a)(3)(B)(iii); *see also* *Richardson v. TVIA, Inc.*, No.  
 22 C-06-06304 RMW, 2007 U.S. Dist. Lexis 28406 at \*8-9 (N.D. Cal. Apr. 16, 2007) (citing *In re*  
 23 *Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002).

24 The goal of Congress in enacting this provision was to “empower investors” to “have the  
 25 greater control over class action cases.” *See* “Private Securities Litigation Reform Act of 1995 –  
 26 Conference Report,” 141 Cong. Rec. S17933-97, at S17956 (daily ed. Dec. 5, 1995).

1 The proposed Lead Plaintiffs are institutional investors that have suffered substantial  
 2 losses as a result of Defendants' alleged wrongful conduct. In order to reduce "lawyer-driven"  
 3 litigation, "through the PSLRA, Congress has unequivocally expressed its preference for  
 4 securities fraud litigation to be directed by large institutional investors." *Gluck v. CellStar Corp.*,  
 5 976 F. Supp. 542, 548 (N.D. Tex. 1997). *See also Sakhrani v. Brightpoint, Inc.*, 78 F. Supp. 2d  
 6 845, 850 (S.D. Ind. 1999) ("The PSLRA was enacted with the explicit hope that institutional  
 7 investors ... would step forward to represent the class and exercise effective management and  
 8 supervision of the class lawyers."). By appointing the Boilermakers, New Orleans and  
 9 MARTA/ATU as Lead Plaintiffs in this case, the Court would be fulfilling one of Congress's  
 10 major aims in passing the PSLRA, namely giving institutional investors an increased role in  
 11 securities class actions.

#### 12 **1. The Movants Have the Largest Financial Interest in the Action**

13 The PSLRA requires a court to adopt a rebuttable presumption that "the most adequate  
 14 plaintiff ... is the person ... that ... has the largest financial interest in the relief sought by the  
 15 class." 15 U.S.C. § 78u-4(a)(3)(B)(iii); *see also TVIA*, 2007 U.S. Dist. 28406 at \*8 (citing  
 16 *Cavanaugh*, 306 F.3d at 730). "While the PSLRA does not specify how we should decide which  
 17 plaintiff group has the 'largest financial interest' in the relief sought, most courts simply  
 18 determine which potential lead plaintiff has suffered the greatest total losses." *Takara Trust v.*  
 19 *Molex*, 229 F.R.D. 577, 579 (N.D. Ill. 2005); *see also TVIA*, 2007 U.S. Dist. 28406 at \*14  
 20 (approximate loss is most determinative).

21 The Boilermakers, New Orleans and MARTA/ATU each have a major financial stake in  
 22 this litigation. As set forth more fully in the Boilermakers, New Orleans and MARTA/ATU's  
 23 Certifications of Securities Class Action Complaint, each expended substantial amounts in  
 24 purchasing the Certificates. *See Berman Decl.*, Exs. C, D, E. The Movants' initial investments  
 25 in the Certificates owned as of the date of the filing of the instant motion have declined in value  
 26 in excess of sixty-two percent (62%), and thus, have declined precipitously from the price that

each had paid – resulting in substantial financial loss as a result of the wrongful conduct alleged. Plaintiffs are not aware of any other persons who suffered greater losses in connection with the purchase of the Certificates. Thus, the Boilermakers, New Orleans and MARTA/ATU are precisely the type of investors that should be appointed as Lead Plaintiffs in this consolidated action.

## **2. The Movants Satisfy the Requirements of Rule 23 of the Federal Rules of Civil Procedure**

Section 27(a)(3)(B) of the Securities Act further provides that the lead plaintiff must also “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. § 77z-1(a)(3)(B). Rule 23(a) provides that a party may serve as a class representative only if the following four requirements are satisfied:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

For purposes of appointing the lead plaintiff, “of the four prerequisites to class certification, the focus is only on the typicality (Rule 23(a)(3)) and adequacy (Rule 23(a)(4)) requirements.” *Fields v. Biomatrix, Inc.*, 198 F.R.D. 451, 456 (D.N.J. 2000) (citation omitted); *Siegall v. Tibco Software, Inc.*, 2006 U.S. Dist. Lexis 26780, at \*14-15 (N.D. Cal. 2006) (“In the context of determining the appropriate lead plaintiff under the PSLRA, the requirements of ‘typicality’ and adequacy of representation are the key factors.”); *see also Gluck v. CellStar Corp.*, 976 F. Supp. at 546. As a general rule, a plaintiff’s claim meets the typicality requirement if it is both legally and factually similar and arises out of the same events or course of conduct that gives rise to the claims of the other class members. This does not require that the claims be identical, but there must be some common question of fact or law. *See In re Independent Energy Holdings PLC Sec. Litig.*, 210 F.R.D. 476, 480 (S.D.N.Y. 2002) (citing *In re Drexel Burnham*



1 *Lambert Group, Inc.*, 960 F.2d 285, 291 (2d Cir. 1992)). This Court's analysis of any other  
 2 requirements of Rule 23 as it relates to class certification should be deferred until the Lead  
 3 Plaintiffs move for class certification. *Schrivver v. Impac Mortg. Holdings, Inc.*, 2006 U.S. Dist.  
 4 Lexis 40607, at \*15-16 (C.D. Cal. May 1, 2006) ("At the lead plaintiff appointment stage, the  
 5 Rule 23 inquiry is not as searching as it would be on a motion for class certification; the  
 6 prospective lead plaintiff need only make a prima facie showing that it meets the typicality and  
 7 adequacy factors.").

8 Here, the Boilermakers, New Orleans and MARTA/ATU's claims are typical, if not  
 9 identical, to the claims of the members of the Class. As set forth above, the losses suffered by  
 10 the Boilermakers, New Orleans and MARTA/ATU resulted from Defendants' common course of  
 11 conduct which violated the Securities Act by publicly disseminating materially misstatements in  
 12 the Registration Statements. Thus, the Boilermakers, New Orleans and MARTA/ATU satisfy  
 13 the typicality requirement.

14 Further, Section 27(a)(3)(B)(iii) of the Securities Act directs the Court, in evaluating the  
 15 adequacy of a proposed lead plaintiff, to limit its inquiry to the existence of any conflicts  
 16 between the interests of the proposed representative and members of the class, and allows the  
 17 lead plaintiff to retain counsel of their choice to represent the Class "subject to the approval of  
 18 the court." *See* Securities Act § 27(a)(3)(B)(v), 15 U.S.C. 77z-1(a)(3)(B)(v). The adequacy  
 19 standard is met where (1) the named plaintiff has interests common with the Class' interests; and  
 20 (2) the representatives will vigorously pursue the interests of the Class through qualified counsel.  
 21 *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000) (citing *Drexel*,  
 22 960 F.2d at 291).

23 As set forth above, the Boilermakers, New Orleans and MARTA/ATU's interests are  
 24 clearly aligned with the members of the Class, and there is no evidence of any antagonism  
 25 between their interests and those of the Class. The Boilermakers, New Orleans and  
 26 MARTA/ATU share numerous common questions of law and fact with the members of the

Class, and their claims are typical of the members of the Class. Further, the proposed Lead Plaintiffs have retained competent counsel to represent it in this case. Thus, the alignment of interests between the proposed Lead Plaintiffs and the Class and the skill of the proposed Lead Plaintiffs' chosen counsel favor granting the instant motion.<sup>2</sup>

**B. The Court Should Approve The Lead Plaintiffs' Choice of Lead Counsel**

The amendments to the Securities Act vest authority in the lead plaintiff to select and retain lead counsel, subject to the approval of the court. *See* Securities Act § 27(a)(3)(B)(v), 15 U.S.C. § 77z-1(a)(3)(B)(v). A court should not disturb the lead plaintiff's choice of counsel unless necessary to protect the interests of the plaintiff class. In the present case, the three proposed Lead Plaintiffs have retained SSLL, Labaton and BTKMC, as well as Proposed Liaison Counsel HBSS, as Lead Counsel to pursue this litigation on their behalf. As stated above, each of these firms have extensive experience in both securities and complex commercial litigation. As a result, the Proposed Lead Plaintiffs' choice of counsel should not be disturbed.

**III. CONCLUSION**

For all the foregoing reasons, the Plaintiffs respectfully request that the Court grant the instant motion and:

- i) appoint the Boilermakers, New Orleans and MARTA/ATU as Lead Plaintiffs in the above-captioned action pursuant to Section 27(a)(3)(B) of the Securities Act, 15 U.S.C. § 77z-1(a)(3)(B);
- ii) approve the Lead Plaintiffs' choice of counsel and appoint SSLL, Labaton and BTKMC as Lead Counsel, and HBSS as Liaison Counsel, pursuant to Section 27(a)(3)(B)(v) of the Securities Act, 15 U.S.C. § 77z-1(a)(3)(B)(v); and
- iii) grant such other and further relief as the Court may deem just and proper.

---

<sup>2</sup> It is obvious that the requirements of numerosity and the common questions of law or fact are met as all purchases arose as a result of Defendants' material misstatements and omissions in the Registration Statements. Thousands of Certificates valued in the millions of dollars were sold to many thousands of investors.

DATED this 16th day of March, 2009.

HAGENS BERMAN SOBOL SHAPIRO LLP

By /s/ Steve W. Berman  
Steve W. Berman, WSBA #12536  
Reed R. Kathrein  
1301 Fifth Avenue, Suite 2900  
Seattle, Washington 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594

*Liaison Counsel for Plaintiffs and for the Class*

Joel P. Laitman  
Christopher Lometti  
Daniel B. Rehns  
**SCHOENGOLD SPORN LAITMAN &  
LOMETTI, P.C.**  
19 Fulton Street, Suite 406  
New York, NY 10038  
Telephone: (212) 964-0046  
Facsimile: (212) 267-8137

*Counsel for Plaintiff Boilermakers  
and Proposed Lead Counsel for the Class*

Joseph A. Fonti  
Jonathan Gardner  
**LABATON SUCHAROW LLP**  
140 Broadway  
New York, New York 10005  
Telephone: (212) 907-0700  
Facsimile: (212) 818-0477

John A. Kehoe  
Saran Nirmul  
Naumon A. Amjed  
**BARROWAY TOPAZ KESSLER  
MELTZER & CHECK, LLP**  
280 King of Prussia Road  
Radnor, Pennsylvania 19807  
Telephone: 610-667-7706  
Facsimile: 610-667-7056

*Counsel for Plaintiffs New Orleans and  
MARTA/ATU and Proposed Lead Counsel for the Class*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of March, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

**Naumon A. Amjed**  
[namjed@btkmc.com](mailto:namjed@btkmc.com)  
**David M. Balabanian**  
[david.balabanian@bingham.com](mailto:david.balabanian@bingham.com)  
**Michael H. Barr**  
[mbarr@sonnenschein.com](mailto:mbarr@sonnenschein.com)  
**Walter E. Barton**  
[gbarton@karrtuttle.com](mailto:gbarton@karrtuttle.com)  
**Steve W. Berman**  
[steve@hbsslaw.com](mailto:steve@hbsslaw.com)  
**Frank Busch**  
[frank.busch@bingham.com](mailto:frank.busch@bingham.com)  
**Kevin P. Chavous**  
[kchavous@sonnenschein.com](mailto:kchavous@sonnenschein.com)  
**Leslie D. Davis**  
[ldavis@sonnenschein.com](mailto:ldavis@sonnenschein.com)  
**Brian C. Free**  
[bcf@hcmp.com](mailto:bcf@hcmp.com)  
**Reed R. Kathrein**  
[reed@hbsslaw.com](mailto:reed@hbsslaw.com)  
**Frank R. Schirripa**  
[frank@spornlaw.com](mailto:frank@spornlaw.com)  
**Joel P. Laitman**  
[joel@spornlaw.com](mailto:joel@spornlaw.com)  
**Jonathan Gardner**  
[jgardner@labaton.com](mailto:jgardner@labaton.com)  
**Joseph A. Fonti**  
[jfonti@labaton.com](mailto:jfonti@labaton.com)

**John A. Kehoe**  
[jkehoe@btkmc.com](mailto:jkehoe@btkmc.com)  
**Bruce E. Larson**  
[blarson@karrtuttle.com](mailto:blarson@karrtuttle.com)  
**Mike Liles, Jr.**  
[mliles@karrtuttle.com](mailto:mliles@karrtuttle.com)  
**Sharan Nirmul**  
[snirmul@btkmc.com](mailto:snirmul@btkmc.com)  
**Louis D. Peterson**  
[ldp@hcmp.com](mailto:ldp@hcmp.com)  
**Kenneth J. Pfahler**  
[kpfaehler@sonnenschein.com](mailto:kpfaehler@sonnenschein.com)  
**Dennis H. Walters**  
[dwalters@karrtuttle.com](mailto:dwalters@karrtuttle.com)  
**Robert D. Stewart**  
[stewart@kiplinglawgroup.com](mailto:stewart@kiplinglawgroup.com)  
**Timothy M. Moran**  
[moran@kiplinglawgroup.com](mailto:moran@kiplinglawgroup.com)  
**Christopher E. Lometti**  
[chris@spornlaw.com](mailto:chris@spornlaw.com)  
**Daniel B. Rehns**  
[Daniel@spronlaw.com](mailto:Daniel@spronlaw.com)  
**Stephen M. Rummage**  
[steverummage@dwt.com](mailto:steverummage@dwt.com)  
**Steven Caplow**  
[stevencaplow@dwt.com](mailto:stevencaplow@dwt.com)  
**Paul Scarlato**  
[pscarloto@labaton.com](mailto:pscarloto@labaton.com)  
**Serena Richardson**  
[srichardson@labaton.com](mailto:srichardson@labaton.com)

Executed this 16th day of March, 2009, in Seattle, Washington.

HAGENS BERMAN SOBOL SHAPIRO LLP

By:           /s/ Steve W. Berman            
Steve W. Berman